

## INTERLOCAL AGREEMENT REGARDING PLAYGROUND

This Interlocal Agreement ("Agreement") is made and entered into on the dates provided below by and between LANCASTER COUNTY SCHOOL DISTRICT 001, a political subdivision, commonly known as Lincoln Public Schools (hereinafter referred to as "LPS") and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, (hereinafter referred to as "City").

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 et seq., (the "Act"), of the State of Nebraska, provides that two or more public entities may enter into an agreement for joint or cooperative action, and this Agreement is made and entered into pursuant to the provisions of that Act and no separate legal or administrative entity is created under this Agreement; and

WHEREAS, the City owns a tract of land generally located next to Belmont Elementary School in Lincoln, Lancaster County, Nebraska (the "City Site") as shown on Exhibit "A" which is attached hereto and incorporated herein by this reference as though set forth in full; and

WHEREAS, LPS desires to use the City Site for certain site improvements and as a playground for Belmont Elementary School and the new Educare facility to be built at the Belmont Elementary School; and

WHEREAS, the purpose of this joint action is to provide for LPS to use the City Site for such site improvements and as a playground;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by the parties hereto as follows:

1. Purpose, Program Administrators and Duration:

A. Purpose. The purpose of this Agreement is to create a cooperative undertaking between LPS and the City. As such, a joint venture is hereby established between the parties to provide for LPS to make certain site improvements and a playground for use by both LPS and the City on the City Site. Such site improvements and shared playground will generally be located and designed as shown on the concept design drawing for such new playground facility as shown on Exhibit "A" (the "Shared Playground Facility Project"). No a separate legal entity is being created to conduct the cooperative undertaking by the parties. By this Agreement, City grants LPS a license to use the City Site to develop the Shared Playground Facility Project as provided herein. The parties agree to mutual, non-exclusive use of the Shared Playground Facility Project except to the extent that the parties agree to in writing. City shall be permitted to use the Shared Playground Facility Project during school hours.

B. Program Administrators. Except as otherwise provided herein, the cooperative undertaking and the Shared Playground Facility Project shall be administered by a program administrator from LPS and a program administrator from the City (the "Program Administrator(s)"). The City hereby designates the Director of the Park and Recreation Department of the City of Lincoln, or designee as its Program Administrator under this Agreement. The School District hereby designates the Director of Facilities and Maintenance or designee as its Program Administrator under this Agreement. The Program Administrators shall be directly responsible for making decisions and for administering and managing this Shared Playground Facility Project, to include but not limited to its ongoing day to day use, maintenance and upkeep, the utilization of specific equipment and other administrative items and details of this cooperative undertaking. The Program Administrators may mutually administer this Agreement and agree on the rules, regulations, practices, procedures and parameters of utilization as provided herein. The

Program Administrator may be changed from time to time by any party appointing a successor Program Administrator upon no less than seven (7) days advance written notice to the other party.

C. Duration and Rent. This Agreement shall be in full force and effect for a term of twenty (20) years from and after the execution of the Agreement by the parties (initial term) and may be renewed for additional five (5) year terms (renewal term(s)) as mutually agreed upon by the parties. There shall be no charge or other rent due to the City from LPS for such use for the duration of this Agreement. During the initial term, this Agreement may only be terminated by mutual consent of the parties coupled with an agreed upon termination plan for winding up the affairs of Agreement. Either party will notify the other party ninety (90) days in advance of any intent to terminate the Agreement during any renewal term(s).

2. Design, Construction Cost and Maintenance Responsibility. LPS shall be responsible for the design, oversight and actual construction of the Shared Playground Facility Project. LPS agrees that the City will be kept advised with respect to construction issues and progress and may counsel with LPS whenever it deems appropriate. LPS and City Program Administrators must approve the final Shared Playground Facility Project design and construction timeline. LPS shall bear the entire cost responsibility for design, construction, and maintenance of the Shared Playground Facility Project.

3. Ongoing Maintenance and Cost Responsibility. The parties agree that LPS shall bear the responsibility and all costs for ongoing and long term maintenance of the playground equipment and other improvements of the Shared Playground Facility Project. LPS shall, at its sole cost, keep and maintain the entirety of the Shared Playground Facility Project and all improvements and facilities placed thereon, including the rain garden, in good and safe order, condition and repair, including mowing. LPS shall cause all papers, rubbish, empty containers, garbage and other trash accumulated to be picked up and placed in suitable trash and garbage containers, which containers shall be kept in a clean and sanitary condition. In the event that walks are installed or existing, LPS shall clear snow from those walks as needed to provide access to the Shared Playground Facility Project from Belmont Elementary School, the Educare facility, and related grounds. LPS shall pay for all necessary permits and utilities associated with the Shared Playground Facility Project, if any, including but not limited to water, sewer, gas, electricity, phone service, and garbage service. City shall not be responsible for any maintenance, repairs, utilities, or other costs during the term of the Agreement.

4. Indemnification. LPS shall indemnify, defend, and hold the City, its officers, agents and employees harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from use of the Shared Playground Facility Project in connection with activities for Belmont Elementary School or the Educare facility that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by any intentional or negligent act or omission.

City shall indemnify, defend, and hold LPS, its officers, agents and employees harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from use of the Shared Playground Facility Project not in connection with Belmont Elementary School or the Educare facility, such as use in connection with the Belmont Recreation Center, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by any intentional or negligent act or omission.

This section shall not require either party to indemnify or hold harmless the other party for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of one party. The parties do not waive its governmental immunity by entering into this Agreement and fully retain all immunities and defenses provided by law. This section survives any termination of this Agreement.

5. Personal Property and Improvements. All personal property of LPS including fixtures kept, stored or maintained on the Shared Playground Facility Project shall be so kept, stored or maintained at the sole risk of LPS. Upon the expiration of this Agreement or its termination as herein provided, all structures and other improvements installed or built by LPS shall be the City's property, and shall remain upon thereon without compensation to LPS unless otherwise agreed to in writing. The parties agree to coordinate as to appropriate signage for the Shared Playground Facility Project.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns.

7. Amendments. This Agreement may only be amended or modified in writing signed by all parties to this Agreement.

8. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

9. Execution in Counterparts. This Agreement may be executed on two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

11. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretation of contracts generally.

12. Severability and Savings. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section.

13. Waiver. Any waiver by any party of a default of any other party of this Agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this Agreement shall be a waiver of any party's right to demand exact compliance with the terms of this Agreement.

14. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the City, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties, other than contractual relationships stated in this Agreement.

15. Assignment. In the case of the assignment of the obligations under this Agreement by any of the parties hereto, prompt written notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other party to this Agreement.

IN WITNESS WHEREOF, each of the parties hereto have executed and delivered this document by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

LANCASTER COUNTY SCHOOL DISTRICT 001

BY:  11/21/2011  
Mark Shepard, Associate Superintendent for Business Affairs

CITY OF LINCOLN, NEBRASKA

BY: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

